

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	CC Docket No. 95-155
Petitions for Declaratory Rulings filed by)	
Beehive Telephone Co., Inc. and)	NSD File No. L-99-87
Database Service Management, Inc.)	NSD File No. L-99-88

REPLY COMMENTS OF DSMI

Petitioner, Database Service Management, Inc. ("DSMI") hereby replies to the Comments filed herein by Sprint Corporation ("Sprint"), MCI Worldcom, Inc. ("MCI Worldcom"), and the Bell Operating Companies ("BOCs").¹

INTRODUCTION

The Commenters addressed some, but not all, of the issues identified by the Commission in its Public Notice,² but failed to address the ultimate issues of liability and the remedies sought by Beehive Telephone Co., Inc. ("Beehive") in its Amended Counterclaim. In particular, Beehive seeks rulings that DSMI violated 47 U.S.C. §§ 201, 202, 251, and/or 252, and relief in the form of (1) an injunction requiring DSMI to restore 10,000 specific toll free numbers (the "Numbers") to Beehive's exclusive, permanent control,³ and (2) monetary damages, including a refund of amounts

¹ All of the commenters will be jointly referred to hereinafter as "Commenters."

² DA 99-2400, released November 2, 1999 ("Public Notice").

³ Sprint agreed with DSMI that Beehive should not be entitled to permanent assignment of the 10,000 Numbers for alleged violations of Title 47. See Sprint Comments at 3.

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paid to DSMI under the SMS/800 Tariff (“Tariff”). *See* Amended Counterclaim ¶ 97.⁴ To reach those objectives, Beehive challenges DSMI’s right to administer the SMS/800 System⁵ as well as the validity of the Tariff itself.⁶

No Commenter alleged that DSMI had performed any act inconsistent with the SMS/800 Tariff, nor that any Commenter had suffered any actual discrimination or harm from the manner in which DSMI administers the SMS/800 system.⁷ MCI Worldcom and, to a lesser extent, Sprint, seek to use this proceeding as a platform to argue that the *structure* of SMS/800 administration should be changed, rather than to focus on the specific issues raised by Beehive’s Amended Counterclaim.⁸ The Commission has already resolved most of the issues relating to DSMI’s right to administer the SMS/800 System and the validity of the SMS/800 Tariff. In any event, the dispute between DSMI and Beehive is not an appropriate case in which to resolve global issues concerning administration of toll free numbers. If such issues need resolution or further treatment from the Commission, they should be addressed in a rulemaking proceeding.

⁴ The Amended Complaint is attached to Beehive’s Petition as Exhibit 2.

⁵ Beehive challenges DSMI’s right to administer the SMS/800 System because of DSMI’s alleged lack of impartiality (*see* 47 U.S.C. § 251(e)(1)) and because DSMI is not a common carrier. *See* Amended Complaint ¶¶ 58-64, 74-78

⁶ Beehive challenges the Tariff on grounds that 47 U.S.C. § 251(c) requires that SMS/800 access be provided under contract, not tariff, and because the Tariff allegedly does not provide for cost recovery from all telecommunications carriers, as required by 47 U.S.C. § 251(e)(2). *See* Amended Complaint ¶¶ 51-57, 65-69.

⁷ MCI Worldcom’s main complaint seems to be that the SMS/800 system is “controlled” by the BOCs and entities aligned with the BOCs (including DSMI), rather than by a “neutral” third party. *See* MCI Worldcom Comments at 7. It argues that “[t]he predictable consequences of this monopoly-established service are inflated costs, unaccountable administration, anticompetitive conduct, and, at the very least, a plain appearance of partiality in permitting the BOCs to continue to operate the toll free numbering system as a monopoly fiefdom.” MCI WorldCom Comments at 5. However, MCI Worldcom offers *no factual support at all* for this inflammatory conclusion.

⁸ For example, MCI Worldcom argues that “if the Commission would act to bring toll free administration into compliance with the Act, this dispute would be mooted.” MCI Worldcom Comments at 2. MCI Worldcom is wrong. Even if SMS/800 service were administered by a neutral third party not related to the BOCs, the core issue,

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In the following, DSMI will address the issues before the Commission relevant to the dispute between DSMI and Beehive, and will respond to the comments submitted by the Commenters. DMSI will demonstrate that it has not violated Beehive's rights under the SMS/800 Tariff, Title 47, or the United States Constitution, and in any event, Beehive is not entitled to any of the relief it seeks.

I. Discussion

Count I:⁹ Whether the SMS/800 system may be provided under tariff, as it is currently, or must be provided under intercarrier agreements pursuant to sections 251 and 252 of the Act, 47 U.S.C. §§ 251 and 252.¹⁰

Beehive alleges that access to the SMS/800 system must be provided by intercarrier agreements pursuant to 47 U.S.C. §§ 251(c)(3) and 252(a), which DSMI is obligated to negotiate with Beehive in good faith. *See* Amended Counterclaim ¶¶ 51-57. Contrary to Beehive's assertions, the SMS/800 Tariff alone sets forth the terms and conditions pursuant to which access to the toll free database is provided. The Commission has already ordered that SMS/800 service be provided under tariff,¹¹ and has held the Tariff to be valid.¹² Those rulings have not been stayed. Although the issue of the Tariff's validity is presently on appeal,¹³ the

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whether Beehive is entitled to exclusive, permanent control of 10,000 toll free numbers, would still remain.

⁹ As used herein, a "Count" refers to one of the causes of action in Beehive's Amended Counterclaim in the District Court action.

¹⁰ *See* Public Notice p. 1. Headings in the Discussion are the issues as stated by the Commission in the Public Notice.

¹¹ *See* Order, In the Matter of Provision of Access for 800 Service, 8 F.C.C.R. 1423 (Feb. 10, 1993).

¹² *See* Memorandum Opinion and Order, In the Matter of Beehive Telephone, Inc. v. The Bell Operating Companies, 10 F.C.C.R. 10562 (Aug. 16, 1995), *adopted and reaffirmed on voluntary remand from D.C. Cir. No. 95-1479*, 12 F.C.C.R. 17930 (Oct. 27, 1997). The latter order is on appeal in Beehive Telephone Co., Inc. v. FCC, C.A. No. 97-1662, D. C. Circuit.

¹³ *Id.*

Tariff is binding unless and until the D.C. Circuit Court rules otherwise.¹⁴

As noted by the BOCs, it would be wholly inappropriate for SMS/800 service to be provided pursuant to individually negotiated interconnection agreements with carriers. *See* BOC Comments at 2-3. Under Sections 251 and 252, state regulatory authorities have jurisdiction over interconnection agreements. Yet the SMS/800 system is a nationwide system that would be made chaotic at best and totally unworkable at worst if different requirements for access to the service pertained from state to state.

Furthermore, under Section 251, the duty to negotiate interconnection agreements with carriers is imposed only on incumbent local exchange carriers (“LECs”). DSMI is clearly not an incumbent LEC.¹⁵

The Commission should reject any attempt to make the SMS/800 system subject to the requirements of 47 U.S.C. §§ 251(c) or 252(a).

Count II Whether DSMI is an impartial administrator of the SMS system, under section 251(e).

Count II alleges that DSMI is not an impartial administrator of the SMS/800 system under Section 251(e)(1), and that DSMI is not eligible to serve as administrator. *See* Amended Counterclaim ¶¶ 58-64.¹⁶ Thus, Beehive asserts that all actions taken while DSMI purported to

¹⁴ MCI Worldcom agrees that SMS/800 service must be provided under tariff so long as it is administered by the BOCs, but argues that if a “neutral administrator” assumes administration of the SMS/800 system, then the service should be provided under contract, not tariff. *See* MCI Worldcom Comments at 9-10. Again, MCI Worldcom goes beyond the scope of the dispute between DSMI and Beehive.

¹⁵ *See* DSMI’s Memorandum in Support of Motion to Dismiss Amended Counterclaim or, in the Alternative, to Refer Certain Claims to the Federal Communications Commission, and to Stay Action Pending Referral (“DSMI Memo”) at 1-8. The DSMI Memo is attached to Beehive’s Petition herein as Exhibit 3.

¹⁶ Beehive’s allegations were made while DSMI was still owned by the BOCs. Beehive has not stated whether it

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act as administrator of the SMS/800 system are illegal.¹⁷

MCI Worldcom and Sprint do not assert that DSMI is biased *in fact* in its administration of the SMS/800 database,¹⁸ but rather argue that the “impartial administrator” requirement of Section 251(e)(1) requires that the SMS/800 system cannot be administered by the BOCs. *See* MCI Worldcom Comments at 7-8;¹⁹ Sprint Comments at 1. Such an argument goes far beyond the scope of the dispute between DSMI and Beehive, and is inappropriate for resolution in this context.

DSMI meets any reasonable standards of impartiality.²⁰ It is not owned by any segment

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still believes DSMI is partial now that DSMI is no longer owned by the BOCs.

¹⁷ This conclusion does not necessarily follow from the premise. *See* discussion, *infra* pp. 12-13.

¹⁸ In fact, Sprint acknowledges that “DSMI’s performance as an impartial administrator of the SMS/800 database has been satisfactory to date.” Sprint Comments at 1. MCI Worldcom is not so generous, claiming that “since DSMI performs all duties under contract with the BOCs and the SMT, it is effectively their agent. As such, DSMI’s impartiality is open to question. MCI WorldCom is not confident that DSMI can be expected to maintain impartiality given its dependence on the BOCs.” MCI Worldcom Comments at 9-10. However, MCI Worldcom does not point to any evidence of actual partiality on the part of DSMI; its concerns are merely hypothetical and speculative.

¹⁹ MCI Worldcom seeks to mislead the Commission by quoting repeatedly from the Third Report and Order in Docket No. 95-155, ¶ 109, to the effect that “as currently structured, the toll free database administration is inconsistent with section 251(e)(1) of the Communications Act, as amended.” MCI Worldcom Comments at 1, 5. MCI Worldcom fails to note, however, that at the time of that order, DSMI was a subsidiary of Bellcore, which was owned by the BOCs, and that the quoted language related directly to that circumstance, not to the current situation, where DSMI is not owned by the BOCs. *See id.*

²⁰ *See, e.g.,* Third Report and Order and Third Report and Order, In the Matters of Administration of the North American Numbering Plan/Toll Free Service Access Codes, 12 F.C.C.R. 23040 ¶ 69 (Oct. 9, 1997); Order, In the Matter of Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business, FCC 99-346 ¶¶ 24-28 (Nov. 17, 1999). The NANP Requirements Document defined “neutrality” as requiring (1) that an administrator not be an affiliate of any telecommunications service provider, (2) that an administrator may not issue a majority of its debt to, nor may it derive a majority of its revenues from, any telecommunications service provider, but (3) notwithstanding the first two criteria, an administrator may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities. The latter criterion is plainly intended to retain discretion in the Commission to select a neutral administrator notwithstanding possible technical non-compliance with either of the first two conditions. Under the circumstances of this case, where the reservation of toll free numbers has been structured to preclude partiality, and DSMI is not an affiliate of a telecommunications service provider, the Commission may find that DSMI is a neutral administrator, even if it were to find that DSMI

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of the industry, so there is no basis for arguing that it is biased by reason of structural control by a segment of the industry. There is neither allegation nor evidence that it has showed favoritism to any entity or segment of the industry. Indeed, the entire SMS/800 system is designed to avoid any possibility of partiality, because the reservation process is entirely electronic, and permits the reservation of toll free numbers by any Resp Org on a first-come, first-served basis, under rules that apply uniformly to all Resp Orgs. *See* 47 C.F.C. §§ 52.101 et seq.

As noted by the Commission in CC Docket 96-254, and again in its brief in Civil Action No. 97-1662, “the sale of Bellcore eliminates any arguable violation of Section 251(e)(1)....” FCC Respondent Brief, at fn. 69. The North American Numbering Council (NANC), the Commission’s federal advisory committee on numbering matters, has also weighed in on this issue, and declared that “Bellcore, however, was recently sold to SAIC [Science Applications International Corporation], which is not identified with a particular segment of the telecommunications industry. Based on that development, it is the opinion of the NANC that DSMI is an impartial and neutral administrator.” *Letter dated March 25, 1998, from Alan C. Hasselwander, Chairman, North American Numbering Council to Mr. A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission.*

Neither Beehive, MCI Worldcom, nor Sprint can credibly argue that any actual partiality exists in the SMS/800 system, because the terms, conditions, and rates of the SMS/800 Tariff apply equally to all Resp Orgs, and the reservation process is entirely

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did not technically meet one of the first two “neutrality” criteria.

automated, and occurs without any intervention from DSMI or the BOCs.

Count III Whether the SMS/800 system complies with section 251(e)(2), which requires the costs of number administration arrangements and number portability to be borne by all carriers on a competitively neutral basis.

Under 47 U.S.C. § 251(e)(2), “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” Under Count III, Beehive contends that because some Resp Orgs are not telecommunications carriers, the SMS/800 Tariff does not meet the statutory mandate in Section 251(e)(2) and it is therefore unlawful and invalid. *See* Amended Counterclaim ¶¶ 65-69. MCI Worldcom also asserts that “the costs of toll free administration and portability are not borne by all carriers on a competitively neutral basis.” MCI Worldcom Comments at 10. However, neither Beehive nor MCI Worldcom makes a specific proposal how such costs should be allocated in order to make them “competitively neutral.” Moreover, Beehive’s and MCI Worldcom’s arguments have already been addressed and resolved by the Commission in a formal complaint proceeding brought by Beehive, where the Commission approved the lawfulness of the SMS/800 Tariff and its underlying costs.²¹ Indeed, the Commission has expressly or implicitly approved the cost methodology at the inception of the SMS/800 Tariff and each time the rates have been changed and new studies supporting the rates have been submitted.

DSMI believes that Section 251 addresses number administration, and that DSMI is not

²¹ *See* Memorandum Opinion and Order, *In the Matter of Beehive Telephone, Inc. v. The Bell Operating Companies*, 10 F.C.C.R. 10562 ¶¶ 23-24 (Aug. 16, 1995), *adopted and reaffirmed on voluntary remand from D.C. Cir. No. 95-1479*, 12 F.C.C.R. 17930 (Oct. 27, 1997).

engaged in number administration.²² However, even if administration of the SMS/800 database involves number administration, the cost recovery mechanism in the SMS/800 Tariff is competitively neutral because it recovers costs only from users of the system, in proportion to the quantity of use. To recover costs from *all* “telecommunications carriers” including those who do not use the SMS/800 system, would necessarily give the users a competitive advantage over the non-users, because users would receive a service in exchange for their contribution, whereas the non-users would receive nothing. Thus, to interpret the statute to require all telecommunications carriers, including non-users of SMS/800, to pay the costs of the SMS/800 system would be inconsistent with the statute’s mandate that cost recovery be competitively neutral. Therefore, in order to satisfy the competitive neutrality requirement, the statute must be interpreted to mean that the cost of the SMS/800 system must be recovered from all telecommunications carriers *who use the system*. If the statute is interpreted this manner, then the SMS/800 Tariff clearly complies with 47 U.S.C. § 251(e)(2).²³ Furthermore, the phrase “as determined by the Commission” in 47 U.S.C. § 251(e)(2) delegates discretion to the Commission to determine what constitutes “a competitively neutral basis.” The Commission has ample authority to hold that the present system of cost recovery complies with the statute.

The tariff vehicle properly places costs on industry members based on their respective

²² The role of toll free number administration is performed by the North American Number Administrator, and various industry bodies including the Industry Numbering Committee (“INC”) and the SMS Number Administration Committee (“SNAC”). As DSMI explained to the Commission in its pleadings in CC Docket 95-155, it does not reserve, allocate, or disseminate specific toll free numbers from the SMS/800 database. The Resp Orgs themselves perform that task since, by selecting a number from the pool of unreserved numbers, the Resp Org is able automatically to reserve a number for its customer. DSMI simply maintains the SMS/800 system.

²³ Telecommunications carriers that are Resp Orgs, such as Beehive, MCI Worldcom, and Sprint, can hardly complain that some of the costs of SMS/800 administration are shared with Resp Orgs that are not telecommunications carriers, since such sharing reduces the costs for the Resp Orgs that are telecommunications

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use of the SMS/800 system, and thus provides industry members with proper economic incentives in the use of that system. Absent a contradictory ruling from the D.C. Circuit, this issue is moot.

Count IV Whether DSMI may legally discontinue providing SMS/800 service.

Count IV alleges that DSMI has an obligation under the SMS/800 Tariff to provide service to Beehive upon Beehive's request, and that DSMI's refusal to do so constitutes violations of 47 U.S.C. §§ 201, 202(a), and 251(c). *See Amended Counterclaim ¶¶ 70-73.*²⁴

Sprint's Comments provide a sufficient response to the suggestion that DSMI was required to provide service to Beehive even when Beehive was not paying for it:

As administrator of the SMS/800 database, DSMI should be allowed to discontinue providing SMS/800 service to entities which violate the terms and conditions of the SMS/800 tariff in effect. . . . [A] customer which refuses to pay the effective tariffed rates also runs the risk of having its service discontinued, as that customer cannot reasonably expect to continue to receive services for which it refuses to pay.

Sprint Comments at 2. *See also*, BOC Comments at 5.

Moreover, DSMI does not have an obligation under the SMS/800 Tariff to restore to Beehive's exclusive control any of the Numbers that Beehive forfeited when it was denied access to the SMS/800 System for non-payment of the applicable tariff charges.²⁵ No provision in the SMS/800 Tariff requires the restoration of toll free numbers to a Resp Org once the Resp

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carriers.

²⁴ Beehive's argument that DSMI violated these statutes depends on a finding that DSMI is a common carrier, which it is not. *See DSMI Memo* at 2-8, 14-15.

²⁵ The disconnection of toll free numbers from Beehive's control was not directly a result of non-payment; rather, it was a direct result of Beehive's failure to notify its end user customers to designate an alternative Resp Org, as required by the Tariff. *See Tariff* § 2.1.8(A).

Org's access to the SMS/800 database has been disconnected, even if the Resp Org later pays the delinquent charges. On the contrary, the whole scheme of toll free number administration contemplates that unused numbers go into a common pool for reservation by any Resp Org on a first-come, first-served basis. *See* 47 C.F.R. §§ 52.101 et seq.; SMS/800 Tariff.

Count V Whether DSMI may administer the SMS/800 system under tariff even though it is not a common carrier.

Count V alleges that because DSMI is not a common carrier, it may not administer the SMS/800 Tariff. *See* Amended Counterclaim ¶¶ 74-78. Beehive is apparently under the false impression that only carriers may file tariffs, and that an entity that files a tariff may not delegate the tariff's administration to an agent. However, the Telecommunications Act does not prohibit non-carriers from filing tariffs; it only requires carriers to file tariffs. *See* 47 U.S.C. § 203. For example, the National Exchange Carriers Association ("NECA"), which is not itself a carrier, files tariffs. *See Allnet Communication Service, Inc. v. National Exchange Carrier Ass'n, Inc.*, 741 F. Supp. 983, 985 (D.D.C. 1990), *aff'd*, 965 F.2d 1118 (D.C. Cir. 1992) (held NECA not a common carrier even though it performed the function of filing access charge tariffs on behalf of its members); *In the Matter of Communique Telecommunications, Inc.*, 10 F.C.C.Rcd. 10399 (1995).

Sprint stated that "it is quite common for the common carrier that issues a tariff to select an agent to perform certain of the functions associated with provision of the tariffed service," and cited a recent Commission case that upheld that practice. Sprint Comments at 2, citing *In the Matter of Communique Telecommunications, Inc.*, 17 Comm. Reg. 163, ¶¶ 19, 24. *See also*,

BOC Comments at 5.²⁶

DSMI agrees with Sprint and the BOCs that a non-common carrier may administer a tariff as agent of the carrier that filed the tariff.

Count VI Whether DSMI gave proper notice before discontinuing service to Beehive.²⁷

Count VI alleges that DSMI violated the Tariff by failing to give proper notice of the disconnection of the Numbers, by failing to negotiate with Beehive in good faith, and by disconnecting the Numbers without justification. *See* Amended Counterclaim ¶¶ 79-87. However, Beehive has never pointed out the section of the Tariff that supposedly requires notice before disconnecting toll free numbers. At most, Section 2.1.8(A) of the Tariff requires notice prior to termination of a Resp Org's access to the SMS/800 system. DSMI provided such notice before disconnecting Beehive from the database for nonpayment of Tariff charges.²⁸ Therefore, DSMI's actions did not violate the Tariff.

Count VII Whether Beehive held a constitutionally protected property interest in toll free numbers that DSMI violated by discontinuing service to Beehive.

Count VII alleges that Beehive has a constitutionally protected property interest in the Numbers, that DSMI engaged in state action by disconnecting the Numbers without proper notice and hearing, and that therefore, Beehive's constitutional due process rights have been violated. *See* Amended Counterclaim ¶¶ 88-95. Sprint and the BOCs disagree with Beehive,

²⁶ MCI Worldcom takes a slightly different view, arguing that DSMI does not administer the SMS/800 system under tariff, but under contract. *See* MCI Worldcom Comments at 10.

²⁷ No Commenter addressed this issue.

²⁸ *See* letters dated Nov. 29, 1993, Feb. 14, 1994, and Mar. 22, 1994, filed with DSMI's Petition for Declaratory Ruling.

and adopt DSMI's position on this issue. *See* Sprint Comments at 3; BOC Comments at 6.²⁹

Beehive does not have a property interest in the Numbers, and the Commission should so declare.³⁰ Sprint agrees that "toll free numbers are a public resource" and that "[t]here is no basis for reversing the Commission's prior findings or the generally accepted industry standards as regards 'ownership' of toll free numbers." *See* Sprint Comments at 3.

DSMI, a private corporation that is not a federal agency, did not engage in state action when it disconnected the Numbers. It merely enforced a term and condition in a carrier tariff.

DSMI did not violate Beehive's constitutional due process rights. *See* DSMI Memo at 17-21.

Beehive's access to and use of the Numbers is subject to and limited by Commission regulations and the Tariff. As the Commission's rules provide, a Resp Org like Beehive has the limited right to reserve toll free numbers on a first come, first served basis, consistent with the Tariff. Neither Beehive, nor any other Resp Org, has any right to control any toll free number except in accordance with Commission regulations and the Tariff.

In fact, any result that gave Beehive a paramount or superior right, vis-à-vis other Resp Orgs, to reserve and use the Numbers previously assigned to it would constitute discriminatory, unreasonable, and unlawful action in violation of 47 U.S.C. §§ 201(b), 202, and 251(e)(1), Commission regulations (47 C.F.R. §§ 52.101 et seq.), and the Tariff.

²⁹ MCI Worldcom did not comment on this issue.

³⁰ *See, e.g.*, Toll Free Service Access Codes, 12 F.C.C.Rcd 11162, 11185¶ 30 (1997), citing *NANP Order*, 11 F.C.C.Rcd. 2588 (1995); *Bullaro & Carton v. Griswold*, 958 F.2d 374 (7th Cir. 1992); *Shehi v. Southwestern Bell Tel. Co.*, 382 F.2d 627 (10th Cir. 1967); *Atkin, Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330 (Utah 1985); *First Central Service Corp. v. Mountain Bell Tel. Co.*, 95 N.M. 509, 623 P.2d 1023 (1981)

II. Conclusion

Beehive is not entitled to the remedies it seeks.

Beehive is not entitled to permanent, exclusive control of any toll free numbers.

The principal relief sought by Beehive is to obtain exclusive, permanent control over 10,000 toll free numbers. *See* Amended Counterclaim ¶¶ 97(b), 97(g), 97(i). Even if Beehive were successful in persuading the Commission that the SMS/800 system and/or Tariff is not in compliance with the Telecommunications Act, or that DSMI does not have the legal right to administer the SMS/800 system, the Commission is not required to grant Beehive the injunctive relief it seeks. The Commission should not grant such relief because it would constitute a preference to Beehive, in violation of the Telecommunications Act and the Commission's own regulations. *See* 47 U.S.C. §§ 202, 251(e); 47 C.F.R. §§ 52.101 et seq. If Beehive were granted exclusive control over 10,000 toll free numbers, it would contradict and disrupt the underlying principle of number portability, as well as discriminate in favor of Beehive, since no other entity (Resp Org or otherwise) has the right to seize or maintain control over toll free numbers, except in accordance with and subject to the limitations of the Commission's regulations and the Tariff.³¹

Beehive is not entitled to damages for alleged violations of Title 47.

Beehive also seeks monetary damages for DSMI's alleged violations of Sections 201, 202, and 251 of Title 47. *See* Amended Counterclaim ¶¶ 97(c)-(e), 97(j). However, monetary

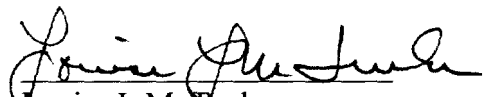
³¹ Sprint agrees with this conclusion: "Indeed, a finding by the Commission that Beehive 'owns' toll free codes or numbers would eviscerate its policy of toll free number portability, since Beehive could conceivably argue that any numbers under its control should remain under its control, even if its end user subscribers wished to port their numbers to another service provider." Sprint Comments at 3.

damages are not an appropriate remedy under the facts of this case. Rather, if the Commission were to find that the present SMS/800 Tariff violates the law, the proper remedy would be to bring the system into compliance with the law by modifying the Tariff prospectively, not by punishing DSMI by imposing monetary damages for DSMI's administration of the existing system.

Beehive has made no showing, and no Commenter has alleged, that DSMI has violated the SMS/800 Tariff. Indeed, Sprint acknowledges that DSMI's administration of the SMS/800 system is satisfactory. *See* Sprint Comments at 1. DSMI is not responsible for the Commission's decisions to require that SMS/800 service be offered under tariff, nor for the terms of the Tariff.³² Accordingly, it should not be held liable for damages for administering the Tariff according to its terms.

Respectfully submitted.

Database Service Management, Inc.



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Dated: December 16, 1999

³² The Tariff was filed by the BOCs pursuant to Commission order. *See* fn. 11, *supra*.

Certificate of Service

I hereby certify that on this 16th day of December, 1999, I caused a copy of the foregoing REPLY COMMENTS OF DATABASE SERVICE MANAGEMENT INC. to be mailed by United States mail, postage prepaid, to:

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